CHUA SIN TENG & ORS. v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) April 19, 1963]

[K.L. — F.M. Criminal Reference No. 1 of 1963]

Penal Code, ss.193, 197, 417 — Tester issuing certificate of competence to drive when knowing same is false in material particular — Offence of cheating the government — Conviction — Sentence.

Road Traffic Ordinance, 1958 — Motor Vehicles (Driving Licence) Rules, 1959, r.10 — Certificate of competence to drive — Issue of, by tester — Whether it is certificate "required by law to be given or signed" under s.197 of Penal Code.

A certificate by a driving tester that a person has passed a driving test is not a certificate which is "required by law to be given or signed" within the meaning of section 197 of the Penal Code.

Observations on the practice relating to the issue of driving licences and the law on the subject.

Case referred to:—
(1) *Giles* v. *Melsom* L.R. 6 H.L.C. 24.

COURT OF APPEAL (CRIMINAL).

Chew Kok Chooi for the 1st appellant.

2nd and 3rd appellants in person.

Wan Hamzah (Deputy Public Prosecutor) for the respondent.

Thomson C.J.: This appeal comes before us for re-hearing by reason of the Judge who originally heard it having granted a certificate under section 34 of the Courts Ordinance to the effect that there is involved a point which it is desirable in the public interest should be determined by this Court.

It is unnecessary at this stage to discuss the facts of the case in any detail; so far as they are relevant they can be stated briefly.

The first appellant is a functionary of Government employed as a tester or examiner under the Motor Vehicles (Driving Licence) Rules, 1959, and it is his duty to examine persons who wish to obtain driving licences for motor vehicles as to their competence. The second appellant is the proprietor of a motor driving school at Seremban and the third appellant is an instructor employed by him.

Early in the year 1961 one Lee Kong Yong, who is some sort of itinerant cake-seller, acquired a motor-cycle for the purposes of his business. He obtained a provisional driving licence but on two occasions failed to pass the necessary tests to enable him to obtain a full driving licence. In spite of these discouraging experiences he continued to be anxious to obtain a driving licence and after some preliminary negotiations with the third appellant he paid to the third appellant a sum of $70 or $80. In the event arrangements were made among all three appellants in consequence of which without Mr. Lee undergoing any tuition and without his being required to subject himself to any sort of test the first appellant on 13th September, 1961, signed a certificate (in the usual form which I shall discuss later) to the effect that Mr. Lee had been examined and had passed the test of competence to drive motor-cycles prescribed by the Motor Vehicles (Driving Licence) Rules, 1959. That certificate, which was false, was passed to the appropriate functionary in the office of the Registrar of Motor Vehicles at Seremban and in consequence Mr. Lee was issued with the desired driving licence.

On that the first appellant was prosecuted and convicted in the Sessions Court on the following charge:—

> "That you on the 13th September, 1961, at the Road Transport Department, Seremban, in the State of Negri Sembilan did issue a Certificate of Passing a Test of Competence to drive in form (D.L. 18) bearing serial No. 243418 which certificate is required to be given by law, namely Rule 10 of the Motor Vehicles (Driving Licence) Rules, 1959 knowing that such certificate is false in material point, to wit, 'LEE KONG YONG I/C NS. 104566 has been examined and has passed the test of competence to drive class 'B' only' and that you thereby committed an offence under section 197 of the Penal Code and punishable under section 193 of the Penal Code."

and on a second charge for an offence of cheating the Government in contravention of section 417 of the Penal Code.

On the first charge he was sentenced to a year's imprisonment and a fine of $600 or in default a further six months' imprisonment and on the second charge he was sentenced to six months' imprisonment to run consecutively with the sentence on the first charge. The second and third appellants were prosecuted for abetment of the offence of issuing a false certificate in contravention of section 197 and of abetment of cheating in contravention of section 417. Each of them was convicted on both charges. Each of them was sentenced to six months' imprisonment and a fine of $600 or six months' imprisonment in default of payment on the first charge and on the second charge to three months' imprisonment.

Against these convictions all three appellants appealed to the High Court and in the event Ismail Khan J., for reasons with which we are not here concerned beyond saying that we agree with them, allowed the appeals in respect of the offences of cheating and abetment of cheating and quashed the convictions. He dismissed, however, the appeals against conviction for giving a false certificate under section 197 and for abetment of that offence but, as has been said, granted a certificate to enable a question of law to be considered by this Court. That question is whether the certificate signed by the first appellant is a "certificate required by law be given or signed" within the meaning of section 197 of the Penal Code.

Before approaching the actual point in question it is necessary to consider separately the practice relating to the issue of driving licences as described in the evidence and then the law on the subject because it would appear that the practice is not in all respects in accordance with the law.

Omitting unnecessary details, the practice is that when an applicant thinks he is sufficiently competent to pass the required tests he makes an application to be examined at the Office of the Registrar of Motor Vehicles. Arrangements are then made for him to be examined by a driving tester who at the conclusion of the test gives a certificate to the effect that the person in question has been examined and that either he has passed or he has failed to pass the prescribed test. If the test has been passed the appropriate certificate is filed in the Office of the Registrar of Motor Vehicles and a driving licence is issued.

That is the practice that is followed and no doubt it is the practice that was contemplated when the Motor Vehicles (Driving Licence) Rules, 1959, were enacted. It is not, however, the practice which these Rules require, because as a matter of construction it is clear that the certificate of passing the test is to be furnished not by the tester to the Registrar but by the Registrar to the person passing the test and then delivered by that person back to the Registrar as evidence that he has passed the test. That would seem to be clear on a consideration of the rules.

Rule 7 provides that tests of competency are to be conducted by examiners appointed by the Commissioner for Road Transport. Rule 8 provides that any person desiring to be tested by such an examiner must apply to a Registrar of Motor Vehicles who is to arrange a time and place for a test.

Rule 10(1) provides that "any person passing the test shall be furnished with a certificate in form Number DL. 18 of the First Schedule" and rule 23 provides that the contents of this form are to be determined by the Commissioner for Road Transport. We have been shown a copy of this form which on the face of it provides for its being signed by the tester.

Rule 10(1), however, does not say by whom the certificate is to be furnished to the person passing the test. In the absence of anything more this might well be read as meaning that the certificate was to be furnished by the tester conducting the test. There is, however, something more. Rule 10(2) goes on to provide "if a certificate or statement so furnished by a Registrar is lost or destroyed, the person to whom it was furnished may obtain a duplicate copy" and sub-rule (3) provides that "an applicant for a licence, who is required to satisfy the Registrar that he has passed the test, shall deliver the certificate for retention by the Registrar".

On all this it is very possible, at least as a matter of common sense, that the intention was to provide that the tester who had passed a candidate for a licence should give him a certificate to that effect and that the candidate should then deliver it to the Registrar who is the functionary entrusted with the duty of issuing driving licences. That, however, is not what the rule says. In our view, as a matter of the ordinary usage of the English language, the words "so furnished by a Registrar" in sub-rule (2) of rule 10 make it clear, however absurd such a position would appear to be, that the certificate mentioned in sub-rule (1) is to be furnished by the Registrar. "So" is a word of reference (see *Giles* v. *Melsom* [1]) and in the circumstances it is impossible to say that "so furnished" does not mean the same as "which has been furnished".

On that interpretation, to which we see no alternative, it is quite clear that a certificate by a driving tester that a person has passed a driving test, as was signed by the present first applicant, is not a certificate which is "required by law to be given or signed" within the meaning of section 197 of the Penal Code. In the circumstances, therefore, we are bound to say that the first appellant did not commit that offence and accordingly the second and third appellants did not abet him in the commission of it. The convictions, therefore, cannot stand.

That, however, is not the end of the matter. The first appellant when he signed the certificate in the circumstances of the present case clearly made a false statement and he made it for the purpose of obtaining a driving licence for Mr. Lee. He therefore committed an offence in contravention of section 137(1)(a) of the Road Traffic Ordinance, 1958. We accordingly alter the conviction in his case to one for that offence and we alter the convictions as to the second and third appellants to abetment of that offence in contravention of section 139 of the Ordinance. On each of them we impose the same sentences as were imposed at the trial.

Order accordingly.

ISMAIL v. PUBLIC PROSECUTOR

[A. Cr. J. (Hashim J.) April 22, 1963]

[Kuala Trengganu — Criminal Appeal No. 1 of 1963]

Penal Code, ss.354, 511 — Attempt to outrage modesty of person — Solicitation for sexual intercourse — Criminal force — Evidence of.

Criminal Procedure Code (Cap. 6), s.173A — Exercise of powers by Magistrate under s.173A — Suitable sentence in such cases.

The appellant, a postman, was charged under sections 354 and 511 of the Penal Code. The complainant said in evidence that the accused pulled out $5.00 and said: "Even if you are married take this money." The learned Magistrate convicted the accused and in exercising his powers under section 173A of the Criminal Procedure Code ordered the appellant to execute a "bond of good behaviour in one surety for a period of 10 months." On appeal,

Held: (1) no evidence was adduced to suggest that the appellant intended to use criminal force on the complainant;

(2) the words "Even if you are married take this money", coupled with the offer of $5.00, were so vague that it was not possible to say with certainty that there had been a solicitation for sexual intercourse.